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Administration of justice at the United Nations

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Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the reports of the Secretary-General on the administration of justice at the United Nations (A/65/373 and Corr.1) and on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/65/303). The Committee also had before it the report of the Internal Justice Council on the implementation of the system of administration of justice at the United Nations (A/65/304). During its consideration of these reports, the Committee met with representatives of the Secretary-General, who provided additional information and clarification.

II. Administration of justice at the United Nations

2. The report of the Secretary-General on the administration of justice at the United Nations was submitted pursuant to General Assembly resolution 63/253, in which the Assembly requested the Secretary-General to conduct a review of the new system of the administration of justice and to report thereon to the Assembly at its sixty-fifth session.

3. Pursuant to General Assembly resolutions 61/261, 62/228 and 63/253, a new system of administration of justice for staff of the Secretariat and of the funds and programmes, which was envisaged as being independent, transparent, professionalized, adequately resourced and decentralized, was established effective 1 July 2009.

4. The informal system is supported by the integrated Office of the United Nations Ombudsman and Mediation Services which, in addition to its office in New

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York, has regional ombudsmen and staff in seven other locations (Bangkok, Geneva, Khartoum, Kinshasa, Nairobi, Santiago and Vienna). The formal system includes two tribunals, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, both staffed by professional judges and supported by Registries in Geneva, Nairobi and New York. An Office of Staff Legal Assistance was also established to provide legal assistance to staff, staffed with legal officers in Addis Ababa, Beirut, Geneva, Nairobi and New York. These elements of the formal system are administered by the newly created Office of Administration of Justice. Within the Office of the Under-Secretary-General for Management, the Management Evaluation Unit was created to carry out the new management evaluation function, which was established as a mandatory first step in the formal system of justice. In addition to these new structures, other offices continue to participate in the new formal system, in particular, the Administrative Law Section of the Office of Human Resources Management, whose responsibilities include representing the Secretary-General before the United Nations Dispute Tribunal, and the General Legal Division of the Office of Legal Affairs, whose functions include representing the Secretary-General before the United Nations Appeals Tribunal.

5. In the opening summary of his report, the Secretary-General states that he views the implementation and functioning of the new system of administration of justice as a success and a significant improvement over the old system. In doing so, the Secretary-General highlights the more prompt disposition of cases, averaging six months, by the United Nations Dispute Tribunal. The Secretary-General also states that, through the consultative mechanism, staff have expressed confidence in the new system. The Secretary-General also indicates, however, that there are some elements of the new system that require adjustment, strengthening or further consideration in order for the system to work optimally. In seeking to address these issues, the report of the Secretary-General seeks additional resources for a number of offices involved in the formal system. In addition, the Secretary-General, having reviewed the emerging jurisprudence of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal during their first year of operation, draws the attention of the General Assembly to aspects of the system's operation which may, in his view as chief administrative officer, have significant financial implications and an impact upon the interests of the Organization.

A. General observations and recommendations

6. **The Advisory Committee acknowledges the progress made during the period since the introduction of the new system of administration of justice on 1 July 2009. The Committee commends the efforts of all involved, judges and staff, in establishing the new system and in managing the transition from the previous internal justice system. As highlighted by the Secretary-General, some benefits of the new system are already apparent, most notably the more timely disposition of cases. The Committee is of the view that any meaningful assessment of the new system would require more time and experience, given that many aspects, including its jurisprudence, have yet to settle. As such, it is too soon to determine the impact of its establishment on the culture and practices of the Organization. Institutionalizing a system of justice that ensures respect for the rights and obligations of staff and promotes accountability is desirable; one that fosters a culture of litigation is not.**

7. **The Advisory Committee notes that many of the requests for resources contained in the report of the Secretary-General are linked, directly or indirectly, to the caseloads before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. Given the extent of the change reflected in the new system of administration of justice, it is natural that a settling-in period would occur for all involved. As such, the Committee is of the opinion that it is too early to assess what both the caseloads and the output of the Tribunals will be once the system stabilizes. While greater awareness among staff may lead to increased usage of the system, other factors, such as a more established body of precedents, may contribute to the more timely disposition of cases. The Committee is, therefore, of the view that more experience is necessary to accurately ascertain the demands that will be placed on the system, including the balance that will exist between the formal and informal systems, and by extension the infrastructure that will be required to effectively support it.**

Resource requirements

8. In his report, the Secretary-General has identified a number of areas requiring strengthening and for which additional post and non-post resources are requested. Additional requirements of $7,627,500, including 27 new posts, are requested under the programme budget for the current 2010-2011 biennium. In addition, two posts are requested under the support account for peacekeeping operations, although no additional resources are requested at this point (A/65/373 and Corr.1, paras. 241-245). Upon enquiry, the Advisory Committee was provided with information in respect of the full cost of these proposals for the 2012-2013 biennium, which are estimated at $18,235,000. The Committee was also provided with an estimate of the current costs of the system of administration of justice, calculated to be $29,218,300 on a biennial basis, excluding the resources being requested in the report of the Secretary-General (see table 1). The Committee notes that the current requests, which equate to over $18 million on a biennial basis, would therefore represent an increase in the cost of the system of over 60 per cent.

Table 1
Estimated current cost for the new system of administration of justice[a]
(United States dollars)

Biennial appropriation 2010-2011	
Office of the Administration of Justice	13 353 800
Office of the Ombudsman and Mediation Services	6 457 900
Office of Legal Affairs (4 posts)	1 179 700
Management Evaluation Unit (6 posts)	1 542 400
Administrative Law Section (6 posts)	1 601 000
Subtotal	**24 134 800**

Support account for peacekeeping operations[b]	
Office of the Ombudsman and Mediation Services (9 posts)	2 568 400
Administrative Law Section (8 posts)	2 515 100
Subtotal	**5 083 500**
Total	**29 218 300**

[a] Estimate excludes additional resources requested in document A/65/373 and Corr.1, and temporary support currently provided through the Secretary-General's limited budgetary discretion.

[b] Amounts have been adjusted to reflect biennial figures.

9. For the reasons outlined in paragraphs 6 and 7 above, the Advisory Committee is of the view that the first year of its operation does not provide sufficient basis to determine the resource requirements necessary to effectively support the new system of administration of justice on an ongoing basis. **The Committee notes that 20 of the 27 posts being requested under the regular budget are presently funded under the limited budgetary discretion of the Secretary-General. Noting also that the requests for additional resources are being put forward in the middle of the budgetary cycle, the Committee is of the view that temporary arrangements could be continued within the approved biennial programme budget while further experience is gathered on the functioning of the new system of administration of justice. As such, the Committee does not recommend approval of the 27 new posts proposed for establishment under the programme budget. In addition, the Committee does not recommend approval of the two posts requested under the support account for peacekeeping operations to be based in the regional field service centre in Entebbe, Uganda. The Committee does, however, recommend funding for one temporary P-3 position for the Office of Staff Legal Assistance, to be based in Nairobi, funded from the support account for peacekeeping operations (see para. 35 below). In respect of non-post resources, the Committee recommends the provision of $1,000,000 to meet the interpretation and translation needs of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (see para. 28 below).**

10. In respect of the report of the Secretary-General (A/65/373 and Corr.1), the Advisory Committee noted a lack of clarity with regard to which elements were being recommended for General Assembly action. In particular, the Committee noted that the report contained several references to the need for strengthening and for additional resources, both post and non-post, for which no specific requests were made. Similar issues were noted in the report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/65/303). Upon enquiry, the Committee was provided with a document that clearly presented the proposals being put forward by the Secretary-General for General Assembly action at this time, as well as others which were included to provide an accurate account of the new system and to initiate discussion on the issues concerned (see annex I). On these matters, it is stated that the General Assembly may wish to take decisions at some future time. **The Advisory Committee stresses the importance of clarity with regard to the specific proposals being made by the Secretary-General and urges**

adherence to the approved format of reports presented to the General Assembly for its consideration.

11. **The Advisory Committee recommends that future reports on the administration of justice provide statistical data on the activities of the Tribunals and of the offices involved in a more structured and consistent form. Where applicable, for example in respect of judgements of the United Nations Dispute Tribunal, information should also be provided on the underlying administrative issues. An analysis of trends over a number of reporting periods would also be helpful both to identify systemic issues leading to usage of the system of justice and to monitor whether they are being effectively addressed over time.**

Cost-sharing arrangements

12. The Advisory Committee recalls that in paragraph 62 of its resolution 62/228, the General Assembly approved the proposals of the Secretary-General for a cost-sharing scheme based on the number of staff in the Secretariat and in the funds and programmes (see A/62/294, paras. 161 and 162). While the current report of the Secretary-General does not address this issue, the Committee was informed, upon enquiry, that although discussions have been ongoing since February 2008, an agreement on a cost-sharing arrangement has yet to be concluded. The Committee was informed that after discussions on an initial draft memorandum of understanding, a revised draft is currently being finalized by the Secretariat prior to circulation for comments by the funds and programmes. **The Advisory Committee regrets that an agreement on a cost-sharing arrangement has not been finalized and urges the expeditious conclusion of these negotiations.**

B. Review of the new formal system of administration of justice

Management Evaluation Unit

13. The new system of administration of justice established a requirement for staff members to submit cases for management evaluation as the first mandatory step of formal proceedings. This step provides the opportunity for management to correct or overturn decisions when deemed necessary. It also provides an avenue to identify alternative solutions for resolution of the dispute, including possible mediation and, in doing so, prevent unnecessary litigation. The report of the Secretary-General, in paragraphs 6 to 10, details the activities of the Management Evaluation Unit, which carries out this function for the Secretariat. In paragraphs 146 to 150, the report provides further information with regard to the independence of the Management Evaluation Unit, emphasizing that the Unit operates independently from the decision makers whose decisions are being contested (see also para. 46 below).

14. During the period from 1 July 2009 to 30 June 2010, 428 cases were submitted to the Management Evaluation Unit for management evaluation, representing a 95 per cent increase over the number of cases received for administrative review under the former system during the period from 1 July 2008 to 31 March 2009 (see A/65/373 and Corr.1, para. 7). The Advisory Committee was informed that following completion of the review, a management evaluation letter is sent to the staff member concerned from the Under-Secretary-General for Management. This evaluation letter may uphold or overturn — completely or partially — the contested

administrative decision. The letter sets out the positions of the staff member and the Administration, as well as the relevant rules of the Organization and the applicable jurisprudence and how both apply to the facts of the case. Should the staff member still wish to contest the decision, he or she has the right to proceed to the United Nations Dispute Tribunal. The Committee was informed, however, that currently the Management Evaluation Unit does not have access to systematically track the number of cases that are subsequently submitted to the United Nations Dispute Tribunal, but that discussions were ongoing with the Office of Administration of Justice to facilitate this. **The Advisory Committee requests that future reports include such information.**

15. Upon inquiry, the Committee was provided with additional information in respect of the outcome of the cases handled by the Management Evaluation Unit during the reporting period, which is outlined in table 2.

Table 2
Activities of the Management Evaluation Unit, 1 July 2009 to 30 June 2010

Cases received	428
Cases closed	372
Evaluation letters issued	126
Cases resolved informally[a]	111
Cases not receivable	108
Cases re-routed to correct receiving entity[b]	27
Cases open	56

[a] Resolution by the parties involved, referral to the Office of the Ombudsman and Mediation Services or withdrawal by the staff member.
[b] Funds, programmes and specialized agencies.

16. In respect of the 126 evaluation letters issued during the period, the Advisory Committee was informed that the managerial decision being contested was upheld by the Under-Secretary-General for Management in 93 cases (74 per cent), overturned in 14 cases (11 per cent) and partially upheld in 19 cases (15 per cent). **The Advisory Committee is of the view that every effort should be made to resolve cases before litigation is resorted to. The management evaluation function is an important opportunity to do so by allowing for faulty administrative decisions to be addressed. The Committee considers that the type of statistical information detailed above is useful in assessing the effectiveness of the management evaluation function and requests that future reports include such statistics.**

17. As noted in the report of the Secretary-General (A/65/373 and Corr.1), the evaluation process carried out by the Management Evaluation Unit takes place within statutorily imposed deadlines, 30 days in respect of cases submitted by staff at Headquarters and 45 days for cases submitted by staff in offices away from Headquarters. The report of the Secretary-General notes that the Unit may not be in a position to conduct timely and quality management evaluations within these deadlines with its current staffing resources should the number of cases submitted continue to increase at the current rate. The Committee notes that the report of the

Secretary-General does not include requests for additional resources for the Management Evaluation Unit.

United Nations Dispute Tribunal

18. Information on the establishment, composition and functioning of the United Nations Dispute Tribunal is provided in paragraphs 11 to 35 of the report of the Secretary-General. During its first year of operation, in addition to 312 cases transferred from the previous system, 198 new cases were received, representing an average of 16 or 17 cases monthly. During the same period, the eight judges of the Dispute Tribunal disposed of 220 cases, an average of just over 18 cases a month, leaving 290 cases pending as at 30 June 2010. Information on the activities of each of the three locations of the Dispute Tribunal is summarized in table 3.

Table 3
Activities of the United Nations Dispute Tribunal, 1 July 2009 to 30 June 2010

	Total	*Geneva*	*Nairobi*	*New York*
Cases transferred from joint disciplinary committees or joint appeals boards on 1 July 2009	**169**	61	55	53
Disposed of	**132**	55	36	41
Pending	**37**	6	19	12
Cases transferred from the United Nations Administrative Tribunal on 1 January 2010	**143**	51	40	52
Disposed of	**12**	12	—	—
Pending	**131**	39	40	52
New applications received	**198**	85	38	75
Disposed of	**76**	46	8	22
Pending	**122**	39	30	53
Total cases received	**510**	**197**	**133**	**180**
Total cases disposed of	**220**	**113**	**44**	**63**
Total cases pending as at 30 June 2010	**290**	**84**	**89**	**117**

19. During the reporting period, 213 judgements, both on the merits and on interlocutory matters, were made by the United Nations Dispute Tribunal. Upon enquiry, the Advisory Committee was informed that, of these, 129 judgements were in favour of the respondent, 35 were in favour of the applicant and 19 were partly in favour of the applicant. There were also 30 judgements issued in cases that were either settled, withdrawn or successfully mediated.

20. The report of the Secretary-General indicates that the cases before the United Nations Dispute Tribunal can roughly be set out in seven categories: (a) appointments; (b) benefits, entitlements and classification; (c) disciplinary matters; (d) non-promotion; (e) non-renewal of appointment; (f) termination and separation from service; and (g) other. The report indicates that the greatest number of cases fell into the category of non-renewal of appointment (A/65/373 and Corr.1, para. 25). Upon enquiry, the Advisory Committee was provided with additional

information in respect of the distribution of the 510 cases received within each of these categories. This information is set out in table 4.

Table 4
Categories of cases before the United Nations Dispute Tribunal, 1 July 2009 to 30 June 2010

Category	*Number*	*Percentage*
Non-renewal	108	21
Non-promotion	87	17
Disciplinary	82	16
Other	79	15
Benefits, entitlements and classification	70	14
Appointment	49	10
Separation	35	7
Total	**510**	**100**

21. **As indicated in paragraph 11 above, the Advisory Committee requests that future reports include clear statistics on the cases received and disposed of during the period by both the Dispute Tribunal and the Appeals Tribunal, including information, by category, as to whether the judgements rendered found for the applicant or the respondent and on the administrative issues involved.**

22. The Advisory Committee was informed that the Department of Management closely monitors the nature of cases before the United Nations Dispute Tribunal and the jurisprudence reflected in the judgements of both the Dispute Tribunal and the United Nations Appeals Tribunal and that human resources managers are briefed on the implications for staff administration. In addition, the Committee noted that in August 2010 the Office of the Under-Secretary-General for Management published through iSeek a guidance paper for managers drawing on lessons learned from the jurisprudence of the Tribunals. The paper dealt, in the main, with the most common issue before the Dispute Tribunal, the non-renewal of contracts. **The Advisory Committee welcomes the efforts of the Department of Management to ensure that lessons are systematically drawn from the cases dealt with by the Tribunals and are disseminated widely throughout the Organization to inform and guide the decisions of managers.**

23. Based on the caseload during the first year of operation of the United Nations Dispute Tribunal, the report of the Secretary-General indicates that a backlog will quickly emerge if judicial capacity is reduced to three full-time judges and two part-time judges at the end of June 2011, when the current term of the three ad litem judges is due to expire. The Secretary-General has therefore recommended that the General Assembly appoint a second full-time judge in each of the three Dispute Tribunal locations (A/65/373 and Corr.1, para. 26). To support these judges, the Secretary-General proposes the creation of nine posts (3 P-3, 3 P-2, 2 General Service (Other level) and one Local level) under the regular budget (ibid., para. 241 (a)). These positions are currently supporting the ad litem judges and are also being funded through the limited budgetary discretion of the Secretary-General.

The Secretary-General also notes that the additional flexibility provided by the part-time judges has been very helpful, in particular in forming three-judge panels when required, and indicates that the Assembly may wish to consider strengthening flexible judicial capacity, although no specific request is put forward in his current report (ibid., para. 27).

24. **The Advisory Committee is of the opinion that it is too early to reach a conclusion as to what the workload and output of the United Nations Dispute Tribunal will be on an ongoing basis. In this regard, the Committee was provided, upon enquiry, with information on the number of judgements and orders issued by the judges of the Dispute Tribunal, which indicated variations in output. While understanding that cases will differ in complexity, it is also likely that, over time, norms will be developed that will affect the output of the Tribunal. The Committee does not recommend the appointment of a second full-time judge in each of the Dispute Tribunal locations, or the establishment of the nine posts needed to support them, at this time. Noting that the three ad litem judges and the nine positions providing support to them are presently funded under the limited budgetary discretion of the Secretary-General until 30 June 2011, the Committee is of the view that temporary arrangements could be continued within the approved biennial programme budget while further experience is gathered on the functioning of the new system of administration of justice.**

25. In respect of non-staff issues having an impact on the functioning of the United Nations Dispute Tribunal, the report of the Secretary-General also outlines the need for the provision of suitable courtroom space for public hearings of the Dispute Tribunal, including facilities for interpretation. The report states that premises have been provided in Geneva and Nairobi, although these do not provide for simultaneous interpretation. In New York, the Dispute Tribunal has held hearings in existing conference rooms as well as in a temporary courtroom. The report indicates that no provision has been made for the construction of permanent courtroom space in any of the three Dispute Tribunal locations. The report also highlights the need for additional funds for more effective use of videoconferencing, for travel of the Dispute Tribunal registrars and judges to plenary sessions and to provide training opportunities for judges and legal staff. The Advisory Committee notes the needs identified by the Secretary-General for the effective functioning of the Dispute Tribunal. While some, it would seem, could have been identified when the new system of administration of justice was being established, others will only become apparent as more experience is gained in respect of the functioning of the new system. The Committee will consider specific proposals to address such issues if put forward by the Secretary-General.

United Nations Appeals Tribunal

26. Information on the composition and functioning of the United Nations Appeals Tribunal is provided in paragraphs 36 to 49 of the report of the Secretary-General. During its first year, the Appeals Tribunal held two sessions, from 15 March to 1 April in Geneva and from 21 June to 2 July in New York. During the reporting period, the Appeals Tribunal received a total of 110 appeals, including 19 appeals transferred from the Administrative Tribunal. These appeals consisted of: (a) 53 cases from staff members appealing judgements and orders of the United Nations Dispute Tribunal; (b) 33 appeals by the Administration in respect of Dispute

Tribunal judgements and orders; (c) 10 appeals against the United Nations Joint Staff Pension Board; and (d) 14 appeals against the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) (A/65/373 and Corr.1, para. 40). The Secretary-General notes that the number of cases filed with the Appeals Tribunal during its first year is comparable with the workload of the International Labour Organization (ILO) Appeals Tribunal, which considers approximately 110 cases annually (ibid., para. 47). During the reporting period, the United Nations Appeals Tribunal rendered a total of 64 judgements, of which 40 were in respect of appeals of judgements of the United Nations Dispute Tribunal. Of these 40 judgements, 28 were in respect of appeals submitted by staff members, of which 23 were rejected and 5 were entertained in whole or in part. In judgements related to the 14 appeals filed by the Secretary-General, 10, including one cross-appeal, were rejected and 4 appeals, including one cross-appeal, were entertained in whole or in part (ibid., paras. 42-44).

27. The report of the Secretary-General indicates that the current staffing of the United Nations Appeals Tribunal Registry, which consists of two Professional (1 P-5 and 1 P-3) and two General Service (Other level) posts, is inadequate to fully support the Tribunal and to allow cases to be addressed in a timely manner, indicating that as a result there is a substantial likelihood that a backlog of cases may accumulate. The Advisory Committee notes that no requests for additional staffing for the Appeals Tribunal are put forward in the current report of the Secretary-General. The Committee recognizes the importance of ensuring the timely disposition of cases by the Appeals Tribunal and trusts that appropriate measures will be taken to ensure that cases are dealt with expeditiously. The report of the Secretary-General also indicates that it is envisioned that the Appeals Tribunal will have sufficient cases to justify meeting for three sessions annually, but notes that the current travel budget of the Appeals Tribunal is insufficient to support a third session. The Committee notes that no additional travel funds were requested for that purpose. Upon enquiry, however, the Committee was informed that a third session during 2010 was held in October 2010, using funds redeployed from within the existing budget of the Office of Administration of Justice.

28. The report of the Secretary-General notes the requirement in the United Nations Dispute Tribunal and the United Nations Appeals Tribunal statutes that judgements be published in the official language used in the submission of the staff member, unless the staff member requests a copy in another official language. The report of the Secretary-General states, however, that currently no provision is made for translation or for interpretation services for hearings of the Tribunals (see A/65/373 and Corr.1, paras. 28 and 29). To address this need, resources in the amount of $3,730,800 ($3,268,900 for translation and $461,900 for interpretation services) are requested under the regular budget for the period from 1 January 2011. Upon enquiry, the Advisory Committee was informed that the required services had, to date, been provided by the Department for General Assembly and Conference Management on an "as available" basis. **Having considered the additional information provided on the calculations underpinning the resource request, the Advisory Committee is of the view that the estimates are not sufficiently based on the actual requirements faced by the Tribunals to date and did not adequately justify the level of resources being requested. The Committee recommends that the Secretary-General explore the most cost-effective means to meet the needs of the Tribunals for the remainder of the biennium and**

recommends approval of $1,000,000 for the provision of interpretation and translation services for the United Nations Dispute Tribunal and the United Nations Appeals Tribunal.

Office of Staff Legal Assistance

29. Information on the functioning of the Office of Staff Legal Assistance is provided in paragraphs 50 to 69 of the report of the Secretary-General. The report states that the Office provides professional legal assistance to staff consisting of legal advice and representation to staff contesting an administrative decision or appealing a disciplinary measure. Assistance is provided in cases where the Office determines that a case has legal merit and will be receivable by the Tribunals. The Office may decline to take the case, however, when the Office determines that pursuing the case is not in the interest of the staff member, in the interest of justice or within the scope of the legal obligations of the Office to bring a case before the Tribunal (A/65/373 and Corr.1., para. 52). During the reporting period, the Office dealt with 938 cases (346 cases transferred from the former United Nations Panel of Counsel and 592 new cases). At the end of the reporting period, 510 cases had either been closed or solutions had been found and 428 remained active. Of the 938 cases received, the largest category of cases related to disciplinary matters, followed by non-renewal of appointment and then non-promotion. The main source of contested decisions was peacekeeping operations, from where 231 cases were received. A total of 197 further cases were from four Secretariat entities, the Department of Management, the Department for General Assembly and Conference Management, the Department of Safety and Security and the Department of Public Information (ibid., para. 57).

30. Upon enquiry, the Advisory Committee was informed that in respect of 131 appeals before the United Nations Appeals Tribunal in the period from 1 July 2009 to 4 October 2010, the staff member concerned was represented by the Office of Staff Legal Assistance in 37 instances, by an external lawyer in 55, by another staff member in 4 instances and represented themselves in 35 instances. In the same period, in 290 cases before the United Nations Dispute Tribunal, the staff member was represented by the Office of Staff Legal Assistance in 119 cases, was self-represented in 85 cases and was represented by another staff member or by external counsel in 86 instances.

31. In its resolutions 61/261 and 62/228, the General Assembly agreed with the need for the provision of professional legal assistance to staff in the system of administration of justice. The decisions of the Assembly have also consistently raised the issue of a staff-funded scheme for the provision of legal assistance and support to staff. The report of the Secretary-General indicates, however, that efforts to obtain additional funding from staff unions, former clients, external parties or through contributions to the Trust Fund for Staff Legal Assistance, which was established in January 2010, have resulted in very limited success (A/65/373 and Corr.1, para. 60). In this context, the Advisory Committee recalls paragraph 14 of resolution 63/253, in which the Assembly requested the Secretary-General to report to the Assembly at its sixty-fifth session on proposals for a staff-funded scheme in the Organization that would provide legal assistance and support to staff. **The Committee regrets that the current report of the Secretary-General does not contain proposals in this regard.**

32. With regard to the mechanisms for providing legal assistance to staff in other organizations in the United Nations common system, the Advisory Committee recalls the information provided by the Secretary-General in paragraphs 23 to 33 of his report contained in document A/62/294. The Committee was also informed that the ILO Administrative Tribunal, the World Bank Administrative Tribunal and the International Monetary Fund Administrative Tribunal award costs to successful applicants, including costs associated with being represented by counsel. It was stated that the jurisprudence of these tribunals indicates that the following criteria are applied when determining an award of costs relating to counsel: (a) whether the complaint was allowed in whole or in part; (b) whether the applicant was successful in establishing an important principle (even if the applicant did not prevail on the main claim); (c) whether the case was a complex one warranting the assistance of counsel; (d) whether the fees are in accordance with the prevailing rates in the jurisdiction of the concerned attorney; and (e) the amount at stake in the complaint.

33. The report of the Secretary-General indicates that approximately 15 volunteer counsel affiliated with the Office of Staff legal Assistance assisted in managing the caseload during the reporting period. Legal interns and external pro bono counsel have also assisted the work of the Office. The Advisory Committee was informed, however, that the more professional presentations required by the judges of the Tribunals presented challenges in the use of volunteers who did not have a legal background. The Secretary-General indicates that the present staffing of the Office is insufficient to handle the volume of cases and that the Office also requires legal officers with more experience. To address this, nine new posts are requested for the Office of Staff Legal Assistance, seven under the regular budget and two under the support account for peacekeeping operations. The additional posts under the regular budget consist of three posts at the P-4 level to serve as a deputy in New York and as regional coordinators in Geneva and Nairobi, one General Service (Other level) post for Geneva and three Local level posts for Addis Ababa, Beirut and Nairobi (A/65/373 and Corr.1, paras. 63 and 241 (c)). Given the large number of cases filed by staff serving in peacekeeping operations, it is also proposed to establish two posts in the regional field service centre in Entebbe, Uganda, one P-3 and a National General Service post, to be funded under the support account for peacekeeping operations (ibid., paras. 64, 65 and 241 (c)).

34. **Pending receipt of proposals for a staff-funded scheme for the provision of legal assistance and support to staff, the Advisory Committee does not recommend the establishment of the seven new posts proposed for the Office of Staff Legal Assistance under the regular budget.** The Committee further recalls paragraph 13 of resolution 63/253, by which the General Assembly decided to revert to the mandate and functioning of the Office of Staff Legal Assistance, including the participation of current and former staff as volunteers, at its sixty-fifth session. **The Committee is of the view that decisions on the staffing requirements of the Office of Staff Legal Assistance must, of necessity, also take into account any decision of the Assembly on the mandate and functioning of the Office.**

35. With regard to the proposal of the Secretary-General for two new posts, one P-3 and one National General Service level, to be established in the regional field service centre in Entebbe and funded under the support account for peacekeeping operations, the Advisory Committee noted that peacekeeping operations were the most common source of cases received by the Office of Staff Legal Assistance, the majority of which related to disciplinary issues. **As noted in paragraph 7 above,**

the Committee is of the view that more time is needed to determine the resources necessary to support the system of administration of justice on an ongoing basis. However, given the number of cases being received by the Office of Staff Legal Assistance from peacekeeping operations, and notwithstanding the above, the Committee recommends approval of one temporary P-3 position under the support account for peacekeeping operations for the current financial period to assist in such cases. The Committee recommends that the post be located in Nairobi, given that the United Nations Dispute Tribunal is located there, and where the post would augment the existing capacity of the Office of Staff Legal Assistance.

Office of the Executive Director

36. The report of the Secretary-General indicates that during the reporting period the principal tasks of the Office of the Executive Director were to set up the Office of Administration of Justice, coordinate the selection of staff for the Registries of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal and of the Office of Staff Legal Assistance, provide assistance to the judges of the Tribunals in taking up their duties and facilitate a smooth transition from the old system of justice to the new one. In carrying out these tasks, the Office prepared and carried out an induction course for the newly appointed judges of the Dispute Tribunal and the Appeals Tribunal and also facilitated the plenary meetings of the Dispute Tribunal and the two Appeals Tribunal sessions during the period. The Office of Administration of Justice also provided support to the Internal Justice Council in its work. The Executive Director and other senior staff of the Office of Administration of Justice undertook outreach missions at several duty stations and participated in the two most recent sessions of the Staff-Management Coordination Committee. A website providing information on the system of administration of justice, through which all judgements rendered by the Tribunals are available, was also launched. In addition, work is ongoing to develop a web-based electronic case management system, which is expected to be available later this year. The Office of Administration of Justice is also responsible for negotiating and concluding agreements with entities in the United Nations common system for their participation in the new system. Such agreements have been concluded by the Secretary-General with the International Civil Aviation Organization, the International Maritime Organization, UNRWA, the International Seabed Authority and the International Tribunal for the Law of the Sea.

37. The report of the Secretary-General states that while the Office of the Executive Director is the focal point for the technical, budgetary and logistical aspects of each of the substantive offices within the Office of Administration of Justice, the Office of the Executive Director has limited experience in administrative areas. As such, the Secretary-General notes that the Office of the Executive Director would benefit from strengthening, at both the Professional and General Service level, in the area of administration (A/65/373 and Corr.1, para. 78). The report further indicates that the travel funds currently allocated are insufficient to meet the requirements of the Office (ibid., para. 81). The Secretary-General also highlights the importance of the role of the Executive Director in maintaining the independence of the formal system and the position's responsibility for coordination of the elements of the formal system, including of the registries and of the Office of Staff Legal Assistance. The Executive Director also represents the formal system

both within the United Nations and to external bodies. In light of this, the Secretary-General states that the General Assembly may wish to reconsider the proposals regarding the classification of the Executive Director and the Special Assistant made by the Secretary-General in document A/62/294 (ibid., para. 80). The Advisory Committee notes that no proposals have been put forward by the Secretary-General with regard to the Office of the Executive Director.

Administrative Law Section

38. The activities of the Administrative Law Section of the Office of Human Resources Management in respect of the formal system of justice are outlined in paragraphs 83 to 93 of the report of the Secretary-General. The Section is responsible for representing the Secretary-General in his role as Respondent before the Dispute Tribunal in respect of cases filed by staff serving across the global Secretariat, including the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, but excluding cases from staff of the United Nations Office at Nairobi, the United Nations Environment Programme, the United Nations Human Settlements Programme, the United Nations Office at Geneva, and the United Nations Office at Vienna.

39. On receiving an application from the United Nations Dispute Tribunal, the Administrative Law Section makes a determination as to whether to recommend pursuing informal resolution or whether the case should be litigated, in which case a reply to the application must be submitted within 30 days. If the case is litigated, legal officers of the Section attend hearings on the case and make further written submissions as ordered by the Dispute Tribunal. The Section also handles disciplinary matters referred to the Office of Human Resources Management relating to all Secretariat staff and staff of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia. The report of the Secretary-General highlights a substantial increase in workload since the introduction of the new system. In addition to the increase in the number of cases being handled, the shift from document-based proceedings under the former system to a combination of hearings and written submissions under the new system has substantially increased the workload involved in each case. On average, the number of working days required to process an appeal is stated as having increased from 5 days under the former system to 15 days under the new system.

40. The report notes that two additional support account posts, to be based in Nairobi, were approved effective 1 July 2010 to handle appeals relating to peacekeeping staff. The report further indicates that the Secretary-General has provided temporary resources of one P-4 and two P-3 posts under his limited budgetary discretion in order to address the backlog of cases referred from the United Nations Administrative Tribunal. Given the workload of the Section, including the work related to disciplinary matters, the report of the Secretary-General states that additional resources are necessary to avoid the development of a backlog and requests that the resources issued under his limited budgetary discretion authority for one P-4 and two P-3 posts be converted to established posts under the regular budget effective 1 January 2011 (A/65/373 and Corr.1, para. 93). The Advisory Committee notes the additional workload of the Administrative Law Section, in terms of both the number of cases and the time required for each case. As stated in paragraph 7 above, however, the Committee considers that more time is required to ascertain the level of resources necessary to effectively support the new

system of justice. **As such, the Committee does not recommend approval of the posts requested, one P-4 and two P-3, at this time. Noting that these positions are currently funded under the limited budgetary discretion of the Secretary-General until 30 June 2011, the Committee is of the view that temporary arrangements could be continued within the approved biennial programme budget while further experience is gathered on the functioning of the new system of administration of justice.**

Other legal offices representing the Secretary-General before the United Nations Dispute Tribunal

41. Information in respect of representation by legal officers of the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Office for Project Services, the United Nations Office at Geneva, the United Nations Office at Vienna and the United Nations Office at Nairobi at the United Nations Dispute Tribunal is presented in paragraphs 94 to 117 of the report of the Secretary-General. The report indicates that the experience of these offices mirrors that outlined for the Administrative Law Section in that the new professionalized system, including more oral hearings and often multiple written submissions, has significantly increased the workload on the legal units concerned.

Office of Legal Affairs

42. As outlined in paragraphs 118 to 131 of the report of the Secretary-General, the General Legal Division of the Office of Legal Affairs provides advice to offices and departments of the Secretariat, as well as the funds and programmes and the International Tribunals, concerning the interpretation or implementation of the Staff Regulations and Rules or other personnel policies and practices and their impact on individual cases. The General Legal Division also represents the Secretary-General before the United Nations Appeals Tribunal. This responsibility includes both the filing of appeals against United Nations Dispute Tribunal judgements and responding to appeals filed by staff members. The General Legal Division performs this function with respect to all offices and departments of the Secretariat, as well as the funds and programmes. During its first year of operation, the report of the Secretary-General states that approximately 40 per cent of the judgements of the Dispute Tribunal have been appealed, which represents a significant increase in the workload associated with handling cases before the former United Nations Administrative Tribunal.

43. The report of the Secretary-General notes that no additional posts were approved for the Office of Legal Affairs in the context of the establishment of the new system of administration of justice beyond the three Professional and one General Service posts that had already been dedicated to the administration of justice. To help address the increased workload on the office, the Secretary-General provided temporary resources consisting of eight positions, three P-4, three P-3 and two General Service (Other level), under his limited budgetary discretion. The Secretary-General now proposes the establishment of these temporary positions as new posts under the regular budget with effect from 1 January 2011. **The Advisory Committee is of the view that, as for other components of the system of administration of justice, it is too early to assess the ongoing workload of the United Nations Appeals Tribunal and the requirements necessary to support it.**

Moreover, the Committee is of the view that over time a more established body of precedents should reduce the number of appeals to the Appeals Tribunal and facilitate the timely disposition of many of those that are made. The Committee, therefore, recommends continuation of temporary arrangements for these eight positions through the current biennium rather than their establishment as posts as proposed by the Secretary-General.

C. Responses to questions relating to the administration of justice

44. Section III of the report of the Secretary-General responds to specific queries set out in General Assembly resolutions 63/253 and 64/233 as outlined below.

Proposals for delegation of authority for disciplinary measures

45. In resolution 62/228, the General Assembly had accepted, in principle, the delegation of authority for disciplinary measures to heads of offices away from Headquarters and heads of missions/special representatives of the Secretary-General. Having considered the subsequent report of the Secretary-General (A/63/314), the Assembly, in paragraph 33 of its resolution 63/253, requested the Secretary-General to submit to the Assembly a new detailed proposal on this issue, including a variety of options for delegation of authority for disciplinary measures, with full costing and a cost-benefit analysis, taking into account the recommendations contained in the report of the Advisory Committee (A/63/545). The Committee notes that the Secretary-General has not responded to the request of the Assembly. In his current report, the Secretary-General has reviewed the feasibility of his earlier proposal for limited delegation of authority and has concluded that a number of the safeguards and the prerequisites identified previously have not yet been put in place or met (see A/65/373 and Corr.1, paras. 139-142). Furthermore, the Secretary-General states that the introduction of the new system of justice has changed the spectrum of the United Nations system of administration of justice, notably in that disciplinary cases are now being considered in the first instance by professional judges. In addition, the jurisprudence of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal has only recently begun to emerge. For a combination of these reasons, the Secretary-General states that it would not be prudent to introduce a new system of delegated authority at this time. The Secretary-General therefore proposes to put the previous recommendation for limited delegation of authority on hold and indicates that once the required elements are in place and a full analysis has been done of the implications on all options for managing disciplinary cases, a new proposal will be presented to the Assembly. The Secretary-General states that he will report to the Assembly on the subject at its sixty-seventh session. **The Advisory Committee has no objection to the approach of the Secretary-General. The Committee recalls, however, that the intent of the proposal for delegation of authority on disciplinary matters was to address delays in the current centralized system, which could give the appearance of impunity and a lack of accountability. In the absence of delegation of authority, and pending further developments, the Committee expects that the Secretary-General will ensure expeditious action as and when required. This is particularly necessary in cases that could affect the well-being of staff or the smooth functioning of an office or mission. The Committee recommends that the next report of the Secretary-General on the**

administration of justice include information on the timeliness of the handling of disciplinary cases.

Independence of the Management Evaluation Unit

46. In response to paragraph 34 of General Assembly resolution 63/253, the report of the Secretary-General provides further information in respect of the independence of the Management Evaluation Unit (A/65/373 and Corr.1, paras. 146-150). The report indicates that the Management Evaluation Unit operates as a separate unit within the Office of the Under-Secretary-General for Management, reviewing requests for management evaluation and presenting its findings and recommendations to the Under-Secretary-General in the form of a draft management evaluation letter to the staff member concerned. The Under-Secretary-General for Management approves and signs the letter, representing that the findings and recommendations are endorsed by the Secretary-General. The Secretary-General emphasizes that the Management Evaluation Unit operates independently from the decision makers whose decisions are being contested and from the Administration's legal advisers, and also highlights that the Unit does not deal with disciplinary cases.

Monetary compensation awarded by the Tribunals

47. In response to General Assembly resolution 64/233, the report of the Secretary-General provides information on the monetary compensation awarded by the United Nations Dispute Tribunal and the United Nations Appeals Tribunal during the period from 1 July 2009 to 30 June 2010 (A/65/373 and Corr.1, paras. 151-154 and annex II). The Advisory Committee notes that the information provided consists of a listing of all Dispute Tribunal and Appeals Tribunal judgements during the first year of operation, with information provided on compensation awarded, where applicable. While informative, the Committee notes that this does not respond to a number of the elements requested in paragraph 8 (e) of resolution 64/233, by which the Assembly requested an analysis of monetary compensation awarded and indirect costs associated with an appeal, such as staff time, including identification of those aspects of staff administration that give rise to large numbers of appeals, and comparative data from the old and the new system. **The Committee recommends that the General Assembly request the Secretary-General to provide the full range of information requested which would be beneficial in the context of reviewing the functioning of the new system of administration of justice.**

Status of judges of the United Nations Appeals Tribunal and their entitlements

48. In paragraph 7 of resolution 64/233, the General Assembly requested the Secretary-General to report on the status of the judges of the United Nations Appeals Tribunal and their entitlements. In response (see A/65/373 and Corr.1, paras. 155-164), the Secretary-General points out that neither the Secretary-General nor the General Assembly has to date explicitly addressed the status of Appeals Tribunal judges. The Secretary-General notes, however, that the members of the former United Nations Administrative Tribunal were considered "experts on mission" for the purposes of the Convention on the Privileges and Immunities of the United Nations and that the Appeals Tribunal judges would also have the same status.

49. With regard to entitlements, the Secretary-General, in paragraph 83 of document A/63/314, set out the rates of honorarium for the judges of the United Nations Appeals Tribunal using rates equivalent to those applied to the judges of the ILO Administrative Tribunal. As such, head judges would receive $2,400 per judgement and participating judges $600 per judgement. While information was provided in document A/63/314 on the entitlements for United Nations Dispute Tribunal judges, the report did not specify the conditions of service and entitlements for Appeals Tribunal judges. The General Assembly, in paragraph 30 of its resolution 63/253, subsequently approved the conditions of service for Dispute Tribunal and Appeals Tribunal judges as contained in the report of the Secretary-General (A/63/314). Given that the Secretary-General did not specify the travel entitlements of Appeals Tribunal judges in his report, the Secretary-General notes that the Assembly, in approving the conditions of service contained therein, did not specifically establish such entitlements.

50. At present, the travel entitlements of the United Nations Appeals Tribunal judges, as with United Nations Dispute Tribunal judges, are set at the level of a D-2 staff member in the Secretariat. These entail payment of daily subsistence allowance and business class travel on trips of 9 hours or longer, unless otherwise approved by the Under-Secretary-General for Management. This differs from what was applicable to the judges of the former United Nations Administrative Tribunal, who were entitled to business class travel regardless of the duration of the flight and payment of daily subsistence allowance at the regular rate plus 40 per cent. The Secretary-General therefore recommends that the travel privileges and the level of daily subsistence allowance previously provided to the former United Nations Administrative Tribunal judges should also be accorded to the judges of the United Nations Appeals Tribunal. The Advisory Committee notes that additional funding in the amount of $87,900 is requested for this change for the remainder of the biennium. The Committee was provided, upon enquiry, with information on the travel entitlements of the judges of the ILO Administrative Tribunal. The Committee was informed that the entitlements of the ILO Administrative Tribunal judges are calculated at the D-2 level, which provides for payment of travel expenses by air to be calculated at business class for all travel over 6 hours. Regular daily subsistence allowance plus 15 per cent is also paid.

51. **The Advisory Committee recognizes the importance of the role played by the judges of the United Nations Appeals Tribunal in the system of administration of justice.** In this regard, the Committee notes the difference between the travel entitlements currently being applied to United Nations Appeals Tribunal judges with those of both the former judges of the United Nations Administrative Tribunal, who were entitled to business travel regardless of the duration of travel and payment of daily subsistence allowance plus a 40 per cent supplement, and those applicable presently to ILO Administrative Tribunal judges, who receive payment for business class travel when travel exceeds 6 hours and who are paid daily subsistence allowance plus a 15 per cent supplement. **As highlighted in the report of the Secretary-General, the General Assembly has not specifically addressed the issue of the travel entitlements for United Nations Appeals Tribunal judges. The Advisory Committee is of the view that this is a gap that needs to be addressed and recommends that it be considered by the Assembly.**

Recourse mechanisms for non-staff personnel

52. Responding to the request in paragraph 9 of resolution 64/233, the Secretary-General reviews the respective advantages and disadvantages of a number of options in respect of recourse mechanisms for non-staff personnel (A/65/373 and Corr.1, paras. 165-183) as follows:

(a) **Establishment of an expedited special arbitration procedure conducted under the auspices of local, national, or regional arbitration associations, for claims under $25,000 submitted by personal service contractors.** The Secretary-General notes that initiating such procedures for claims valued at less than $25,000 would not necessarily be effective or efficient for the Organization and would require additional resources. The Secretary-General expresses the view that such small claims may continue to be addressed more effectively through direct negotiation;

(b) **Establishment of an internal standing body that would make binding decisions on disputes submitted by non-staff personnel, not subject to appeal and using streamlined procedures.** The Secretary-General notes that the establishment of a separate body would entail additional costs, including some permanent staffing, and possibly require establishment in locations outside New York. The Secretary-General concludes that in order to establish such internal standing bodies, the following elements would need to be determined: (a) the composition of such a body; (b) its powers; (c) its location(s); (d) all relevant administrative and financial arrangements; and (e) all resource requirements;

(c) **Establishment of a simplified procedure for non-staff personnel before the United Nations Dispute Tribunal, which would make binding decisions not subject to appeal and using streamlined procedures.** The Secretary-General expresses the view that adding non-staff personnel to the jurisdiction of the United Nations Dispute Tribunal at this stage would be detrimental to the new system. In particular, he notes that the terms and conditions applicable to staff members and the principles of administrative law do not apply to non-staff personnel and any claims by non-staff personnel would need to be assessed on the basis of their particular contractual framework and general principles of international law and international commercial law. Furthermore, such expansion would almost double the total population using the formal system and would therefore also require significant additional resources, which are estimated to include a doubling of judges and staff of the Dispute Tribunal Registries;

(d) **Granting of access to the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, under their current rules of procedure, to non-staff personnel.** In reviewing this option, the Secretary-General reiterates his comments made in respect of option (c), stating they are equally applicable to this option, except that the costs would be greater given that non-staff personnel would also have recourse to the United Nations Appeals Tribunal and not just to the United Nations Dispute Tribunal. The Secretary-General reiterates the concerns related to the importance of maintaining separate and distinct the bodies of law and applicable legal frameworks for staff and non-staff personnel. He further states that it would not be possible to have the Tribunals apply the same rules of procedure to non-staff personnel and as such they would need to be modified.

53. For the reasons stated above, the Secretary-General recommended that the General Assembly defer any decision to give non-staff personnel access to the United Nations Dispute Tribunal (A/65/373 and Corr.1, para. 179) and, under the final option, also to the United Nations Appeals Tribunal, until such time that the Tribunals are well-established. Upon enquiry, the Advisory Committee was informed, however, that the Secretary-General was not recommending any particular option among those considered but that the analysis provided was being presented to the General Assembly for its consideration. The Committee notes that the report of the Secretary-General provides updated information on the number of non-staff personnel worldwide, which now exceed 60,000 (ibid., paras. 185-187). The Committee notes that at present disputes arising out of the contractual terms of consultants and individual contractors are handled through the conciliation and arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) (see A/62/748 and Corr.1, para. 12, and A/62/782, paras. 11-17). The Committee shares the concerns raised by the Secretary-General about expanding coverage of the internal system of justice to include non-staff personnel. Apart from the resource implications such an expansion would entail, the increased complexity for judges and legal staff arising from adding cases that require application of a different body of law would be problematic, particularly at a time when the new system is in its initial stages. **As such, the Advisory Committee reiterates its recommendation that the system of administration of justice continue to apply only to individuals covered by the Staff Regulations and Rules of the United Nations (see also A/62/7/Add.7, paras. 14 and 15).**

54. The report of the Secretary-General also provides additional information in response to paragraph 8 of resolution 64/233 on the following: (a) updated information on the number of non-staff personnel working for the United Nations and the funds and programmes (A/65/373 and Corr.1, paras. 185-187); (b) the procedure for management evaluation (ibid., paras. 188-190); (c) a compilation of the standard contract and rules that govern relations between the Organization and the various categories of non-staff personnel (ibid., annex IV); and (d) measures in place to provide for accountability of officials for causing financial loss to the Organization under the new system of justice, including recovery action, and actions taken to enforce such accountability (ibid., paras. 192-194).

D. Views of the Secretary-General as chief administrative officer on issues that may have significant financial implications and an impact on the interests of the Organization

55. As part of his review of the functioning of the new system, the Secretary-General has reviewed the emerging jurisprudence of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal. While noting that the development of the jurisprudence is still in its early stages and that some of the Dispute Tribunal judgements highlighted are the subject of ongoing appeals before the Appeals Tribunal, the Secretary-General has drawn the attention of the General Assembly to issues which, in his view as the chief administrative officer of the Organization, may have financial implications and an impact on the interests of the Organization (A/65/373 and Corr.1, paras. 195-240). The Secretary-General requests that the Assembly give due consideration to the proposals in that section of his report, which relate to the following matters:

(a) Relevance of Administrative Tribunal jurisprudence;

(b) Scope of the Secretary-General's discretion;

(c) Harmonization of proceedings before the Dispute Tribunal;

(d) Scope of the jurisdiction and competence of the United Nations Dispute Tribunal;

(i) General scope of the Dispute Tribunal's authority;

(ii) Jurisprudence of the Dispute Tribunal over acts and omissions by independent entities in connection with the performance of their operational mandates;

(e) Rules of procedure of the Dispute Tribunal;

(f) Production of confidential documents of the Organization;

(g) Interpretation of the term "appointment, promotion and termination";

(h) Award of remedies;

(i) United Nations Appeals Tribunal;

(i) Mechanism for addressing non-meritorious claims;

(ii) Deadline for filing appeals.

56. The Secretary-General requests that the General Assembly give due consideration to the proposals presented in section IV of his report and that accordingly, should the Assembly agree with the proposals, it may wish to:

(a) Recognize the continuing relevance and persuasive force of the jurisprudence of the Administrative Tribunal, particularly where such jurisprudence reflects established legal principles and norms and where there is no conflict with changes introduced by the General Assembly in establishing the new administration of justice system (A/65/373 and Corr.1, para. 199);

(b) Confirm that the exercise of judicial review by the Dispute Tribunal and the Appeals Tribunal should be undertaken with full respect for the prerogatives of the General Assembly as well as for the role of the Secretary-General as the chief administrative officer of the Organization and for his prerogatives and responsibilities under the Charter of the United Nations (ibid., para. 202);

(c) Confirm that the development of jurisprudence of the Dispute Tribunal and the Appeals Tribunal should take into account the international character of the Organization and reflect the diversity of legal traditions (ibid., para. 206);

(d) Reaffirm that the Dispute Tribunal and the Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes and the exercise of such powers shall be in accordance with the role of the Secretary-General as the chief administrative officer, which includes his authority to determine when staff members have engaged in misconduct and to impose appropriate disciplinary measures (ibid., para. 211);

(e) Confirm that he cannot be held liable for acts or omissions by independent entities in connection with the performance of their operational

mandates, as such liability would be inconsistent with the independent status of such entities (ibid., para. 217);

(f) Introduce an additional mechanism to enable the Dispute Tribunal to address non-meritorious claims more expeditiously (ibid., para. 219);

(g) Support the increased use of alternative means for giving testimony, such as increased use of videoconferencing facilities, in view of the simultaneous need to control travel-related costs and to satisfy orders of the Dispute Tribunal for personal appearances (ibid., para. 220);

(h) Amend the statute of the Dispute Tribunal to recognize that where the production of confidential documents would undermine significant organizational interests, such as the security of staff members or the confidentiality of communications between the Organization and Member States, the Secretary-General may decline to produce confidential documents or portions thereof and the Dispute Tribunal may then draw appropriate and reasonable inferences from any such non-production (ibid., para. 226);

(i) Amend the reference to decisions concerning "appointment, promotion and termination" in article 10, paragraph 2, and article 10, paragraph 5 (a), of the statute of the Dispute Tribunal to refer to decisions concerning "appointment, selection, transfer, secondment, assignment, promotion and separation" (ibid., para. 232);

(j) Confirm that compensation is for actual loss sustained as a result of the error or omission proved and that the applicant bears the onus of proof of the loss sustained (ibid., para. 237);

(k) Introduce a mechanism to enable the Appeals Tribunal to address non-meritorious appeals more expeditiously (ibid., para. 239);

(l) Amend article 7, paragraph 1 (c), of the statute of the United Nations Appeals Tribunal to extend the deadline for filing appeals from 45 days to 90 days (ibid., para. 240).

57. **The Advisory Committee notes that the Secretary-General refers to a number of judgements that seem to affect his prerogative as chief administrative officer, and, in certain cases, on decisions already taken by the General Assembly. In this respect, the Committee notes that all elements of the new system of administration of justice must work in accordance with the Charter of the United Nations and the legal and regulatory framework approved by the Assembly. The Committee expects that the Tribunals will be guided accordingly.**

III. Activities of the Office of the United Nations Ombudsman and Mediation Services

58. The report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/65/303), which covers the period from 1 January to 31 December 2009, is the second joint report on the integrated Office of the Ombudsman and Mediation Services which delivers conflict

resolution services to staff of the Secretariat, UNDP, the United Nations Population Fund, UNICEF, the United Nations Office for Project Services and UNHCR.

59. The report highlights the activities of the Office of the Ombudsman and Mediation Services during 2009, noting that this was a year of transition in which the Office sought to expand and decentralize its services, standardize its practices and at the same time meet the high level of demands on its services from staff. The Advisory Committee was informed that the main challenges faced by the Office during the period were responding to requests in a timely manner, being able to respond to all cases irrespective of location and how to change organizational culture to put a greater emphasis on collaboration and conflict resolution. The report notes that all but one of the five Director/Ombudsman positions in the Secretariat, funds and programmes and UNHCR have been filled and all regional Ombudsmen and case officers had been appointed (Bangkok, Geneva, Khartoum, Kinshasa, Nairobi, Santiago and Vienna). To increase awareness among staff, field missions were also conducted to offices away from Headquarters and to peacekeeping missions during the period. In addition, a new website was launched in all six official languages of the United Nations. Internally, the Ombudsman met every quarter with the Secretary-General and the Deputy Secretary-General to highlight important systemic issues. He also met regularly with heads of department and with staff representatives. During the year, the Office of the Ombudsman and Mediation Services also launched a key stakeholder forum which brought together human resources policymakers to discuss the need for reform of organizational policy on the issue of educational requirements for United Nations employment. The Committee has previously highlighted the importance of the ongoing interaction between the Office of the Ombudsman and Mediation Services and other parts of the Secretariat and with staff representatives with a view to highlighting and addressing systemic issues that come to the attention of the Office. The Committee is pleased that such interaction, including with both senior management and staff representatives, is taking place. The Committee is also of the view that the stakeholder forum is a positive example of the role the Office can play as a change agent within the Organization in addressing policy issues that are seen as causing systemic problems. While emphasizing the cost-saving measures taken by the Office, the report of the Secretary-General indicates that the Office of the Ombudsman and Mediation Services has limited capacity within existing funds to effectively support staff members globally, for example to cover special political missions or to respond to emerging crises that may require in-person intervention. The Committee notes that no proposals for additional resources for the Office of the Ombudsman and Mediation Services are put forward in the report of the Secretary-General.

60. In accordance with General Assembly resolution 64/233, the Office of the Ombudsman and Mediation Services provides an annual report to the Assembly on its activities. With a view to streamlining its reporting, the Office is proposing to prepare a comprehensive and detailed report on a biennial basis and an abbreviated report during off years (A/65/303, para. 34). Upon enquiry, the Committee was informed that the annual report would likely focus only on identified systemic issues. **The Advisory Committee has no objection to this proposal.**

61. The report of the Secretary-General states that the Mediation Service, which handles cases requested by the parties or by the United Nations Dispute Tribunal, among others, has been fully staffed and is operational. The report further notes that

mediation guidelines have been developed and issued. The report indicates that the key challenges faced by the Service include gaining the agreement of both parties to participate in the mediation process, given its voluntary nature, ensuring the presence of, or immediate access to, the person with the authority to settle all aspects of a matter and ensuring availability of funds required for a resolution. During the period from 1 July 2009 to 30 June 2010, 10 cases were referred to mediation by the United Nations Dispute Tribunal (A/65/373, para. 35). The Committee was informed that staff of the Mediation Service had met with the Dispute Tribunal judges during their plenary meeting to discuss issues related to the referral of cases from the Tribunal, including the types of cases that would be most amenable to mediation. The Committee was also provided with updated information with regard to the activities of the Service. During the period from 1 July 2009 to 24 September 2010, a total of 49 preliminary inquiries for mediation had been received, although in 18 of these cases agreement by all parties involved to participate in the mediation process was not reached. In total, 20 cases were mediated, 14 of which were resolved, while in 6 cases agreement was not reached. **The Advisory Committee reiterates its view on the important role that the informal process, and mediation specifically, can play in resolving disputes. Given the volume of cases before the Dispute Tribunal, the Committee considers that the number of cases being mediated was low. The Committee notes the recommendations put forward in section V of the report of the Secretary-General to provide incentives for use of the informal system and recommends that they receive active consideration in order to facilitate greater usage of the mediation process.**

62. Section III of the report of the Secretary-General provides information on systemic issues identified in all the entities that the Office of the Ombudsman and Mediation Services serves. The report provides information on issues related to (a) job and career; (b) evaluative relationships; (c) organizational leadership and management; (d) legal, regulatory, financial and compliance matters; (e) compensation and benefits; and (f) safety, health, well-being and work/life balance. The report indicates that during 2009 the issues that were most prominently brought to the Office fell under the three categories of (a) job and career (35 per cent), (b) evaluative relationships (21 per cent) and (c) compensation and benefits (13 per cent). The report of the Secretary-General provides additional information on the types of concerns raised within each of the categories and makes several recommendations on how these could be ameliorated. The Advisory Committee notes the important role that the Office of the Ombudsman and Mediation Services plays in identifying and reporting on systemic issues. Timely action on such issues, which are rooted in policy and procedures, is crucial to promoting greater harmony in the workplace and, by extension, to reducing recourse to the system of administration of justice. The Committee notes the recommendations which the Office of the Ombudsman and Mediation Services feels may alleviate the systemic issues indicated in its current report. While these recommendations are stated as being provided for the General Assembly to consider, the Committee understands that consideration of the merits of these proposals is primarily an issue for the Administration. **The Advisory Committee recommends that timely action be taken to effect any changes in policy or practice thought necessary to address the systemic issues identified in the report of the Ombudsman. The Committee requests that information on the specific measures taken be included in the next report of the Secretary-General on actions taken to address the findings of the**

Ombudsman on systemic issues (see also para. 108 of the report of the Committee on human resources management (A/65/537)).

63. In terms of caseload, the report of the Secretary-General indicates that the number of requests from staff to the Office of the Ombudsman and Mediation Services remained high during the reporting period, although there was a slight drop in 2009 when the Office received 1,287 requests as compared with 1,325 in 2008. However, the report highlights a 33 per cent increase in the use of the services of the Office of the Ombudsman and Mediation Services during the first five months of 2010, including a 69 per cent increase by Secretariat staff. During 2009, 25 per cent of the visitors to the Office were from Headquarters locations, 24 per cent from peacekeeping operations or special political missions and 51 per cent from offices away from Headquarters and country or field offices.

64. While the statistics provided indicate an increasing use of the services of the Office of the Ombudsman and Mediation Services by staff, the Advisory Committee is of the view that continued efforts are required to enhance the usage of the informal system. In this regard, further to resolution 63/253, in which the General Assembly requested the Secretary-General to make proposals for providing incentives for staff to make use of the Office of the Ombudsman to resolve disputes, the report of the Secretary-General highlights a number of challenges to the use of informal means and puts forward a range of recommendations to address them (A/65/303, paras. 119-134). The recommendations are:

(a) Given the importance of raising awareness among staff and managers of the breadth and depth of the services that are offered by the Office of the Ombudsman and Mediation Services, the report highlights the need for the benefits of informal resolution to be communicated by senior managers throughout the Organization. It also recommends that departments work with the Office as the focal point to capture systemic issues and for the Office to channel them to the General Assembly. The report further recommends that the Office be consulted on major policy changes being considered;

(b) Given that mediation is voluntary for all parties, it is recommended that the Organization place greater emphasis on encouraging managers to cooperate when approached by the Office of the Ombudsman and Mediation Services to resolve a situation informally;

(c) Improving access to services provided by the Office is considered as crucial, with in-person interventions being considered most effective. The report highlights the difficulties of carrying out such interventions worldwide, given budgetary restraints. To address this, the Office proposes to develop critical ombudsman response teams, which would provide a rapid response capability;

(d) In order to build competence in conflict resolution, the report recommends that the Office cooperate with human resources officers to provide training for managers in communication and dispute resolution skills. The report also highlights the benefits of team interventions and team-building, although noting the limited resources available for such activities;

(e) The need for staff to see the timely resolution of issues is highlighted. Unlike in the formal system, statutory timelines for action are not laid down in respect of informal resolution. It is therefore recommended that cases brought to the Office should be dealt with within a specified deadline of 30 days, with managers

being required to adhere to deadlines for informal cases. The report also recommends that staff rule 11.1 (c) be amended by replacing the words, "may result in the extension of the deadlines" with the words "shall require the extension of the deadlines", and that staff rule 11.2 (c) be amended by replacing the words "This deadline may be extended" with the words "This deadline shall be extended". It is further recommended that the 60-day time period to file a request for a management evaluation review should be mandatorily suspended if informal dispute resolution proceedings are initiated, just as it is suspended while mediation proceedings are taking place;

(f) In order to ensure that staff receive timely responses to their concerns, it is recommended that focal points be designated in individual departments with whom the Office could interact;

(g) The report recommends that parties who are designated to settle disputes through informal means must have delegated authority to settle the case in order to avoid delays that can affect the ability of parties to reach an agreement;

(h) Currently there is no uniform provision for the payment of financial compensation when a resolution is reached through informal means. The report recommends that a provision for such payment might be established, as is the case in the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal with regard to compensation ordered by the Tribunals;

(i) The report states that increased support is needed from the Organization, managers and the staff associations for the availability and benefits of use of the informal system. It is recommended that this could be done through the performance appraisal system for individual managers who engage in the informal system, through the senior managers compact and through involving the Office in senior management meetings where it can bring trends and patterns to their attention.

65. **The new system of administration of justice requires that the informal system be seen as an efficient and effective mechanism for staff to seek recourse through and for managers to participate in. The Advisory Committee sees merit in some of the recommendations put forward in the report of the Secretary-General to encourage informal resolution of workplace disputes. The Committee requests that active consideration be given to these recommendations by the Administration. The Committee further notes that many of the recommendations put forward are readily implementable and do not require either policy changes or additional resources.**

Annex I

Information on the General Assembly actions requested by the Secretary-General in his report on the administration of justice (A/65/373 and Corr.1)

1. The Secretary-General prepared his report (A/65/373 and Corr.1) after holding consultations with staff and management, including a dedicated session of the Staff-Management Coordination Committee. He considers that the recommendations contained in the report will provide necessary additional strength to the new internal justice system, which already enjoys the confidence of both staff and management. He requests the General Assembly to give due consideration to his proposals and to approve the resources necessary for strengthening implementation of the system.

2. Accordingly, should the General Assembly agree with the proposals contained in the report for additional resources, it may wish to:

(a) Appoint three additional full-time judges for the United Nations Dispute Tribunal;

(b) Approve the establishment of 27 new posts (7 P-4, 8 P-3, 3 P-2, 5 General Service (Other level) and 4 Local level) effective 1 January 2011 under the programme budget for the biennium 2010-2011 (para. 245 (a)) as follows:

(i) With respect to the United Nations Dispute Tribunal, establish nine new posts (3 P-3, 3 P-2, 2 General Service (Other level) and 1 Local level) to support the additional judges (paras. 26, 27 and 241 (a));

(ii) With respect to the Office of Staff Legal Assistance, establish three P-4 posts (Regional Coordinating Council in Geneva and Nairobi and a deputy to the Chief of the Office in New York), one General Service (Other level) post in Geneva and three Local level posts (one each in Nairobi, Beirut and Addis Ababa) (paras. 57-64 and 241 (c));

(iii) With respect to the Administrative Law Section, regularize three posts (1 P-4 and 2 P-3) that have been provided as temporary capacity to date under the authority for limited budgetary discretion granted to the Secretary-General (paras. 87-92 and 241 (d));

(iv) With respect to the Office of Legal Affairs, regularize eight posts (3 P-4, 3 P-3 and 2 General Service (Other level)) that have been provided as temporary capacity to date under the authority for limited budgetary discretion granted to the Secretary-General (paras. 118-130 and 241 (e));

(c) Approve the establishment of a P-3 and a National General Service post in the regional field service centre in Entebbe, Uganda, effective 1 January 2011 to be funded from the budget for the support account for peacekeeping operations for the period from 1 July 2010 to 30 June 2011, and the related costs to be reported in the context of the performance report relating to the support account for peacekeeping operations for the period from 1 July 2010 to 30 June 2011 (para. 245 (c));

(d) Approve the according of travel privileges previously provided to the judges of the former United Nations Administrative Tribunal to the judges of the United Nations Appeals Tribunal (paras. 154-163 and 241 (f));

(e) Approve the proposal of the Secretary-General to report to the General Assembly at its sixty-seventh session on progress relating to the delegation of authority in disciplinary matters, including detailed options for implementation (paras. 144 and 145).

3. With respect to the issues raised by the Secretary-General in his capacity as chief administrative officer relating to matters that may have financial implications and an impact on the interests of the Organization, the Secretary-General requests that the General Assembly give due consideration to the proposals presented in section IV of the report. Accordingly, should the General Assembly agree with the proposals, it may wish to:

(a) Recognize the continuing relevance and persuasive force of the jurisprudence of the Administrative Tribunal, particularly where such jurisprudence reflects established legal principles and norms and where there is no conflict with changes introduced by the General Assembly in establishing the new administration of justice system (para. 199);

(b) Confirm that the exercise of judicial review by the Dispute Tribunal and the Appeals Tribunal should be undertaken with full respect for the prerogatives of the General Assembly as well as for the role of the Secretary-General as the chief administrative officer of the Organization and for his prerogatives and responsibilities under the Charter of the United Nations (para. 202);

(c) Confirm that the development of jurisprudence of the Dispute Tribunal and the Appeals Tribunal should take into account the international character of the Organization and reflect the diversity of legal traditions (para. 206);

(d) Reaffirm that the Dispute Tribunal and the Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes and the exercise of such powers shall be in accordance with the role of the Secretary-General as the chief administrative officer, which includes his authority to determine when staff members have engaged in misconduct and to impose appropriate disciplinary measures (para. 211);

(e) Confirm that the Secretary-General cannot be held liable for acts or omissions by independent entities in connection with the performance of their operational mandates, as such liability would be inconsistent with the independent status of such entities (para. 217);

(f) Introduce an additional mechanism to enable the Dispute Tribunal to address non-meritorious claims more expeditiously (para. 219);

(g) Support the increased use of alternative means for giving testimony, such as increased use of videoconferencing facilities, in view of the simultaneous need to control travel-related costs and to satisfy orders of the Dispute Tribunal for personal appearances (para. 220);

(h) Amend the statute of the Dispute Tribunal to recognize that where the production of confidential documents would undermine significant organizational interests, such as the security of staff members or the confidentiality of communications between the Organization and Member States, the Secretary-General may decline to produce confidential documents or portions thereof and the Dispute Tribunal may then draw appropriate and reasonable inferences from any such non-production (para. 226);

(i) Amend the reference to decisions concerning "appointment, promotion and termination" in article 10, paragraph 2, and article 10, paragraph 5 (a), of the statute of the Dispute Tribunal so that it refers to decisions concerning "appointment, selection, transfer, secondment, assignment, promotion and separation" (para. 232);

(j) Confirm that compensation is for actual loss sustained as a result of the error or omission proved and that the applicant bears the onus of proof of the loss sustained (para. 237);

(k) Introduce a mechanism to enable the Appeals Tribunal to address non-meritorious appeals more expeditiously (para. 239);

(l) Amend article 7, paragraph 1 (c), of the statute of the United Nations Appeals Tribunal to extend the deadline for filing appeals from 45 days to 90 days (para. 240).

4. The following recommendations contained in the report of the Secretary-General have been included by the Secretary-General in order to provide an accurate account of the functioning of the new system and initiate discussion of the highlighted issues. The General Assembly may wish to take specific decisions with respect to these issues at some future time:

(a) The Secretary-General feels that the flexibility to the system provided by the half-time judges has been very helpful, in particular in forming three-judge panels when required. In light of their valuable role in the new system, the General Assembly may wish to consider strengthening flexible judicial capacity (para. 27);

(b) The judges and the Registrars must meet in person periodically to discuss common problems and develop uniform responses to those problems. The present budget did not contemplate the United Nations Dispute Tribunal judges and registrars holding any plenary sessions (para. 35);

(c) The current provision of funding for costs associated with communications is inadequate to allow for effective use of videoconferencing by the Tribunal and its Registries (para. 34);

(d) Given the experience of the first year of operations, taking into account the number of cases filed with the United Nations Appeals Tribunal, it is envisioned that the Appeals Tribunal will have sufficient cases to justify meeting in three sessions annually. However, the Secretary-General notes that the current budget for travel of the Appeals Tribunal is insufficient to accommodate a third session (para. 49);

(e) The General Assembly may wish to accord to the United Nations Appeals Tribunal judges the same travel privileges and the level of daily subsistence allowance previously provided to the former judges of the United Nations Administrative Tribunal (para. 164);

(f) The current staffing of the United Nations Appeals Tribunal Registry is inadequate to fully support the Tribunal and allow it to process cases in a timely way. Given the staffing level of the Registry, there is a substantial likelihood that a new backlog of cases will accumulate at the appellate level (para. 48);

(g) Currently, the travel budget of the Office of Administration of Justice, which must accommodate any travel by the Executive Director and his staff, must

also accommodate travel relating to the sessions of the United Nations Appeals Tribunal, United Nations Dispute Tribunal plenary sessions, travel of participants in Dispute Tribunal hearings when required by the Tribunal and all other Office of Administration of Justice staff travel. The funds currently allocated are insufficient to meet all of these requirements (para. 81);

(h) In light of the requirement that the new system be professionalized and that the hearings of the United Nations Dispute Tribunal would, generally, be open to the public, facilities adequate for a professional court, which are of sufficient size to permit public access, must be constructed in each of the Dispute Tribunal locations (para. 30);

(i) In light of the importance of the role of the Executive Director and the considerable duties performed by this individual, the General Assembly may wish to reconsider the proposals regarding the classification of the Executive Director and the Special Assistant made by the Secretary-General in document A/62/294 (para. 80);

(j) The Office of the Executive Director would benefit from strengthening, both at the Professional and General Service level, in the area of administration (para. 78);

(k) Increase the communications budget allocated to the Office of Staff Legal Assistance to allow the use of videoconferences for periodic meetings between the staff of the Office and the Chief, for staff at different duty stations to communicate with each other, and to represent staff in proceedings (para. 66);

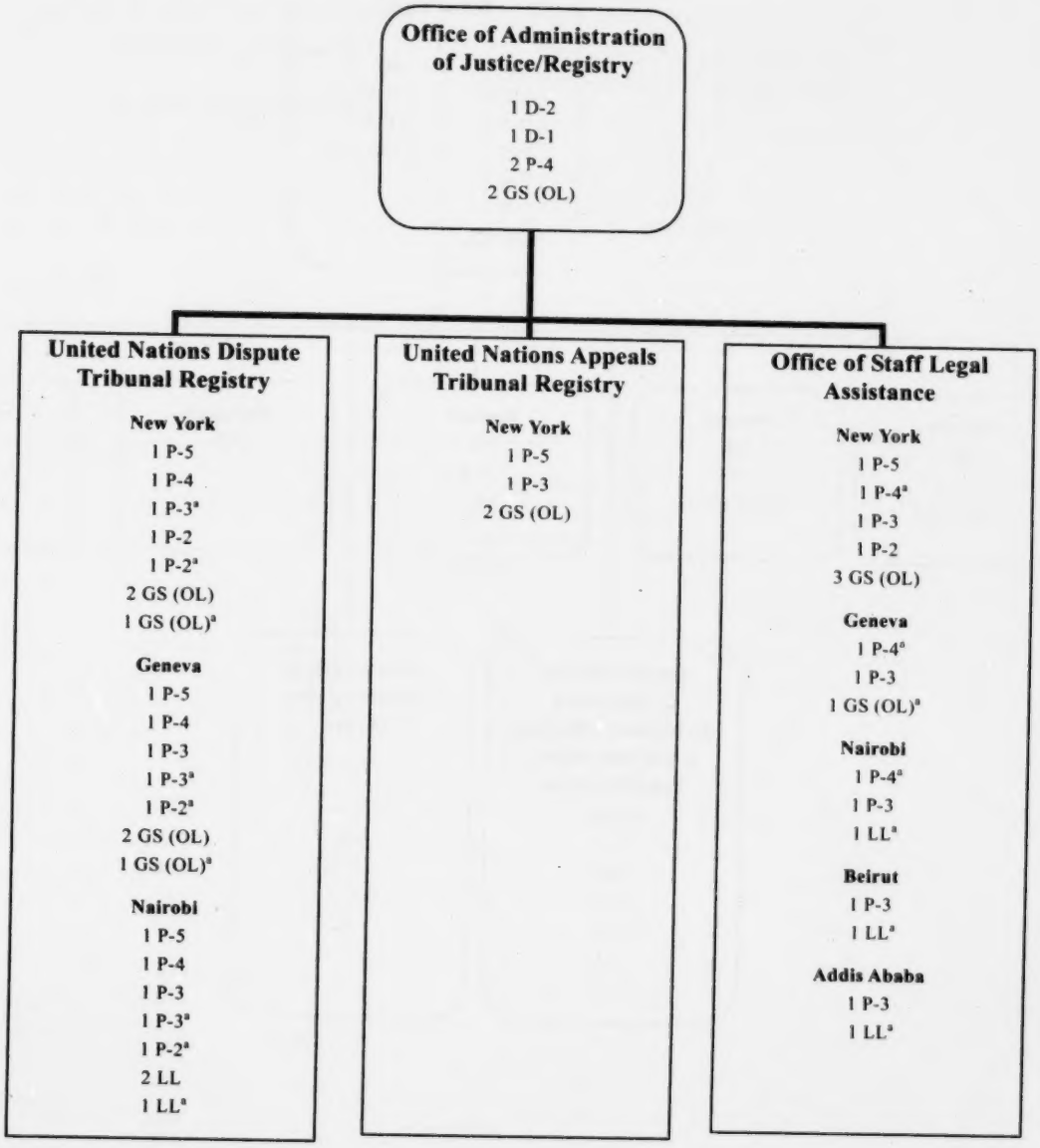
(l) Telecommunications solutions such as Blackberries enable this decentralized office to function efficiently. However, the level of resources of the Office of Staff Legal Assistance does not provide for access to Blackberries (para. 67);

(m) Legal officers in the Office of Staff Legal Assistance in Addis Ababa and Beirut may be required to physically attend hearings of the United Nations Dispute Tribunal on behalf of clients. At present, there is no travel budget for the Office to enable any of these functions (para. 68);

(n) At offices away from New York, there is a significant funding shortfall for necessities such as use of a photocopier and scanner and acquisition of paper and basic office supplies such binders, paper clips and pens. This lack of basic resources, when coupled with the fact that the legal officers work in total isolation, is a serious problem (para. 69).

Annex II

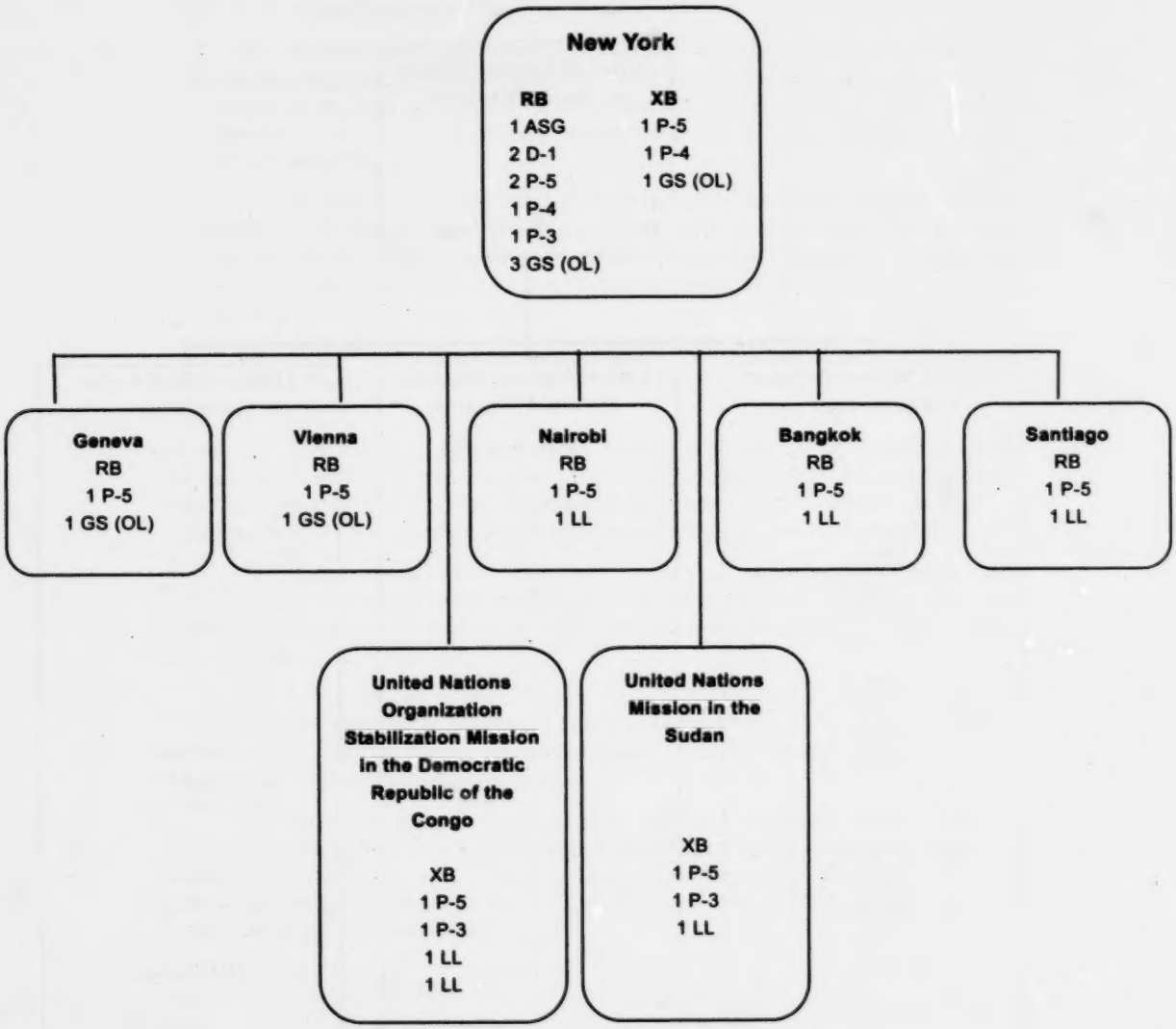
Office of Administration of Justice, organizational structure and post distribution for the biennium 2010-2011



Abbreviations: ASG, Assistant Secretary-General; GS, General Service; OL, Other level; LL, Local level; RB, regular budget; XB, extrabudgetary.

[a] Proposed new posts.

Office of the Ombudsman, organizational structure and post distribution for the biennium 2010-2011



Other components associated with administration of justice at the United Nations, organizational structure and post distribution for the biennium 2010-2011

Office of Legal Affairs

General Legal Division

1 P-5
1 P-4
3 P-4 [a]
1 P-3
3 P-3 [a]
1 GS (OL)
2 GS (OL) [a]

Department of Management, Management Evaluation Unit

1 P-5
2 P-4
3 GS (OL)

Department of Management, Office of Human Resource Management, Administration Law Section

RB	XB
2 P-5	3 P-4
1 P-4	3 P-3
1 P-4 [a]	1 P-2
1 P-3 [a]	1 GS (OL)
3 GS (OL)	